GOVT. APPEAL (SJ) No.25 OF 1989

Appeal against the Judgment of acquittal dated 20.4.1989 passed by Sri S. Abdul Kadar, the then Sub-Divisional Divisional Judicial Magistrate, Bagha, West Champaran, in G.R. No.113 of 1978.

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THE STATE OF BIHAR ----------APPELLANT.
VERSUS
RAMAKANT PANDEY ----------RESPONDENT.

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For the Appellant : Mr. Jharkhandi Upadhayay, A.P.P.
For the Respondent : Mr. R.S. Dwivedi, Advocate.

P R E S E N T

THE HON'BLE MR. JUSTICE ABHIJIT SINHA

JUDGMENT

Abhijit Sinha,J: The instant appeal by the Government is directed against the order dated 10.4.1989 passed by Sri S. Abdul Kadar, the then Sub-Divisional Judicial Magistrate, Bagha, West Champaran, in G.R. No.113 of 1978, T.R. No.11 of 1989 whereby he has acquitted the sole accused, Rama Kant Pandey, of the charges framed under Sections 409, 468, 201 I.P.C.

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2. Briefly stated the prosecution case is that the Assistant Revenue Officer, Triveny Canal, one Birendra Bahadur, held a detailed inspection for the period 7.11.1995 to 30.11.1976 and a report thereof was submitted to the Deputy Collector, Revenue Division, North Bihar, Muzaffarpur, against the sole appellant, inter alia alleging that he had collected a sum of Rs.49,216/99 paise as water rent between the period 7.11.1975 and 13.11.1976 but had not deposited the said amount in the State Treasury although relevant entries were made in the Abstract Register. It was also alleged that during the weeks ending 30.9.1975, 31.6.1976, 7.7.1976, 14.7.1976, 21.7.1976, 14.10.1976 and 30.11.1976, the respondent collected a total sum of Rs.13,678/87 paise but the Treasury Challans of the said amounts were not

produced before the Assistant Revenue Officer during the course of inspection although relevant entries were made in the Abstract Registers which clearly go to show, according to the informant, that the said amount had not been deposited in the State Treasury. Yet another allegation was that a sum of Rs.5, 090/96 paise collected was also not deposited in the State Treasury as the same was not mentioned in the Treasury Challan Register. Allegations were also made against one Brij Kishore Singh, Circle Officer-cum-Zilledar, Bhairaganj Tahsil within Ramnagar Circle, of his having encouraged the sole respondent to make payment to "Shangrahak" on a forged signature.

3. After due investigation the police submitted a final form against Brij Kishore Singh, the Circle Officer-cum-Zilledar , Ramnagar, and a charge sheet was submitted only against the respondent herein, whereafter cognizance was taken. The trial commenced and the sole accused, the respondent herein by the impugned judgment was acquitted of the charges framed against him.

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4. Assailing the impugned judgment it was sought to be submitted by the learned A.P.P. that although sufficient evidence , legal, reliable and cogent, was available on the record for establishing the prosecution case and secure conviction for offences under Sections 409, 468, 201 I.P.C. yet the trial court materially erred in acquitting the accused.

5. On the other hand, the learned counsel for the opposite party/respondent herein submitted that the impugned judgment was well considered and fully based on the materials available on record.

6. Although the powers of the High Court to re-assess the evidence and reach its own conclusion are as extensive as in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always give consideration to matters such as (i) the views of the trial Judge as to the credibility of the witnesses;(ii) the presumption of innocence in favour of the accused, a

presumption not weakened by the fact that he had been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt ; and (iv) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had had the advantage of seeing the witnesses. The golden thread which runs through the web of administration of justice in criminal cases is that where two views are possible, one as held by the trial court for acquitting the accused, and the other for convicting the accused, prudence should guide the High Court not to disturb the acquittal by the trial court unless the conclusions of the trial court drawn on evidence on record are found to be unreasonable, perverse or unsustainable. In other words, interference is called for only when there are compelling and substantial reasons for doing so.

7. Now coming to the merits:-

The case is entirely based on documentary evidence, i.e., the Abstract Register, Remittance Register, and Deposits Register. The case of the prosecution is based on the aforementioned documents according to the evidence of P.W.1. The evidence of P.W.1 is that he gave the aforesaid register/papers to the accused. The duplicate papers of the documents were of course proved but no explanation was furnished for not producing the original. It is true that secondary evidence is permissible but only in the event that evidence is adduced that the primary document is lost. The secondary evidence has to be looked with suspicion and its admissibility is also doubtful unless foundation is laid for reception of secondary evidence.

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8. P.W.1 deposed that the respondent used to collect money from agents who used to receive rent from raiyats and it used to be entered into deposits register and further it used to be entered in the Abstract Register whereafter they were entered in the remittance book. Admittedly, no raiyat has been examined in this case to show that the money was collected from them. That apart no receipts of any payments issued by the agents were produced in evidence in order to show that the money collected by the agents had been handed over to the respondent herein which he had

allegedly misappropriated. Exhibit-3 only shows that the concerned files are in the office and the F.I.R. shows that on the basis of examination of the concerned files the case was registered. It appears that notwithstanding several orders of the trial court for the prosecution to produce relevant documents and papers concerning the case no original documents were produced in the court by the prosecution and to circumvent their shortcomings a novel method was adopted by P.W.1 stating that the original documents were handed over to the respondent. No explanation has been furnished by the prosecution as to why these documents which are to be maintained in the office were handed over to the respondent, more so, when he is not the custodian thereof. The fact of the register being handed over to the respondent unfortunately does not find mention in the earlier version which is the written report. Possibly it appears that when the trial court passed orders directing the prosecution to produce the documents this palpably lame evidence was created by the prosecution at a belated stage to overcome their shortcomings. Even with the utmost magnanimity and sympathy it would be difficult to believe that the original documents which were to be retained in the office were handed over to the respondent and that too after the registration of the case. The Audit Report for the relevant period has also not been proved in the court.

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9. The evidence of the I.O. goes to show that no documents were produced before him during the investigation of the case and that he had submitted chargesheet only on the orders of the Deputy Superintendent of Police.

10. I have gone through the evidence adduced by the prosecution as also the defence in detail and find no illegality in the impugned judgment of the court below. I find no manifest and apparent error in the impugned judgment so as to interfere with the same. It is well settled that sympathy or sentiments should not allow the court to have any effect on its decision making process and such sympathy or sentiments can be invoked only in favour of a person who is entitled thereto and it

should never be taken into consideration as a result whereof the other side should suffer civil or evil consequences. In the instant case the prosecution has completely failed to establish a compact case to show that it was the respondent alone who was responsible.

11. Having regard to the facts and the circumstances of this case and the discussions made above, I am of the opinion that the interest of justice shall be subserved if the impugned judgment is set aside.

12. For the aforesaid reasons I do not find any good or sufficient reasons to interfere with the order passed by the learned Magistrate and dismiss the appeal.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 4th of July,2008.
Pradeep Srivastava/A.F.R.

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